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IN THE

SUPREME COURT of the UNITED STATES

No. 125

A. L. SHAPLEIGH, ET AL,

VS.

PASCUAL C. MIER.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT

RICHARD F. BURGES,
Attorney for Respondent.

WALTER S. HOWE,
Of Counsel.

ELLIS BROS.

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BRIEF FOR RESPONDENT

OPINIONS BELOW

The memorandum decision (unreported) of the District Court of the United States for the Western District of Texas, is in the record, at page 428. The opinion of the United States Circuit Court of Appeals for the Fifth Circuit, (R. 454), (official report unavailable), is reported in 83 Fed., (2nd), 673.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered May 21, 1936. (R. 460). Petition for Certiorari was filed June 19, 1936. Certiorari was granted October 12, 1936. Jurisdiction is conferred on this court by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

Petitioners have not correctly set forth the questions presented upon this appeal.

1. We take no exception to the First Question, which questions the validity of the expropriation proceedings, conducted by the Governor of the State of Chihuahua, Mexico, although the question, as stated by counsel, on page 2 of their Brief, contains the assertion that the District Court held that valid record title was once vested in plaintiffs in error. The trial court, in its "Findings of Fact 2", states:

> "Under the holding of the Court as to the law in this case, it is probably unnecessary for the Court to rule upon the validity of Plaintiffs' title prior to the expropriation thereof under the Constitution of 1917, but if necessary to pass and rule on same, the Court finds that the plaintiffs are shown to have record title to the land in dispute, under the laws of Mexico at the time of the adoption of the Federal Constitution of 1917."

Whether this constitutes a finding of fact that title was vested in plaintiffs will be discussed in this brief.

2. To Question 2, page 2 of Brief of plaintiffs we take no exception.

3. Question 3 of "Questions Presented", page 2 of Brief of plaintiffs, presents an issue nowhere raised in the record in this case. Defendant frankly disclaims any power

in the Governor of Chihuahua, or any Mexican authority whatsoever, to convey title to land after it came under the jurisdiction of the United States, and we maintain that under proper construction of the Banco Elimination Treaty of 1905, dominion and jurisdiction over the Guayuco Banco, (the land here in issue), passed to the United States of America when the land was avulsively cut to the East or American bank of the river in 1926.

Counsel have consistently and persistently argued that defendant deraigns title through a deed executed by the Governor of Chihuahua to Pascual C. Mier, dated February 20, 1930, said deed appearing in the Record, page 277.

In order that there may be no misconception on this question, defendant respectfully invites the attention of the Court to his application to purchase the portion of "La Santisima" embracing the land in controversy, dated March 14, 1925, and appearing in the Record, pages 269 to 272, and the corresponding Executive Power, acknowledging such application, appearing in the Record, pages 273-274.

Attention is also respectfully invited to the Nineteenth Finding of Fact of the trial court, (Record, p. 437), and the Tenth Conclusion of Law, (Record, p. 440), wherein the Court held that the application of Pascual C. Mier, under the laws of Mexico, vested in him a right and interest in the land. The Court nowhere held, and counsel for defendant have never suggested that the deed of February 20, 1930, was effective to convey title. In justice to the Mexican authorities, perhaps it should be stated that in 1930 no decision of any tribunal had established the date when dominion and sovereignty over a banco passed to the nation to which the banco became attached. The diplomatic correspondence, of which we believe the Court takes judicial knowledge, discloses that

Mexico contended that dominion and sovereignty did not pass until the International Boundary Commision had entered its decree. Counsel for petitioner in this case, we believe, supported that contention.

We have never entertained any doubt that the Banco Elimination Treaty of 1905 established the actual river as the boundary, whenever the banco was cut off, unless its area exceeded two hundred and fifty hectares or its population exceeded two hundred souls. Acting under this belief, doubtless, the Governor of Chihuahua executed to Pascual C. Mier his deed and correction deed. Upon the trial of this cause, counsel for Pascual C. Mier, defendant herein, introduced that deed and correction deed to show that, under Mexican law, the application to purchase, when filed with the Governor, vested an inchoate right or title in Mier, which, under Mexican law, would ripen into title, upon compliance with the terms of the law, just as in Texas the bid of the first purchaser, when public domain is offered for sale, vests in the bidder the right to a patent, upon compliance with the law.

We have felt it necessary to enter into this explanation at some length, since counsel iterated in the trial court, reiterated in the Circuit Court of Appeals, and reiterates here the statement that Pascual C. Mier deraigned title from the Governor's deed of 1930, when, in truth and in fact, we have at all times admitted that the Governor of Chihuahua was wholly without power to affect the title of the Guayuco Banco, in any form or manner whatsoever, after it was cut from Mexico in 1926.

In addition to the questions presented above, defendant submits that the following questions are presented:

4. The land in controversy being admitted to have been

within the State of Chihuahua, Republic of Mexico, at the time of the expropriation proceedings, and subject to the sovereignty and jurisdiction thereof, will the courts of the United States question the validity of the laws of Mexico under which the land was expropriated, while located in that Republic, or question the validity of the governmental acts of Mexico with reference to such title, while the land was situated within its sovereign jurisdiction?

5. Did plaintiffs ever acquire or hold title to the land in controversy under the laws of Mexico?

STATEMENT OF THE CASE

Throughout this brief, for the sake of convenience, and to correspond to the brief of "petitioners", (plaintiffs), the parties will be referred to as they appeared in the trial court and in the Circuit Court of Appeals, appellants being plaintiffs in the courts below, and appellee being defendant in the courts below.

The Statement of the Case as set forth in plaintiffs' Brief is accepted as substantially correct, with these exceptions:

First: Defendant denies that plaintiffs pleaded the Mexican Statute of Limitation of ten years in good faith, inasmuch as no mention thereof is made in the original petition, upon which ths case was tried.

Second: As before stated, defendant does not claim that the instruments introduced in evidence by him vested in him a valid title to the land, his contention being that he has an inchoate right, which was vested in him upon the filing of his application to purchase the land, after the expropriation proceedings, as will be hereinafter more fully set forth.

Third: Defendant does not believe that the District

Court found that plaintiffs had record title to the land involved, at the time the Mexican Constitution was adopted, May 1, 1917, for the reason that such finding of the Court was stated to be a finding only "if necessary", and it was not necessary for the Court to make a finding on that subject.

It will be noted that this case was tried before the District Court without a jury, a jury having been waived by written stipulation filed. See Memo. of decision of the Court, (Record, p. 428), and judgment of the Court, (Record, p. 432). It would therefore appear that under 28 U.S.C.A., Sect. 773, the Court's Findings of Fact are to have the effect of a special verdict; that since there are no rulings on demurrers, in accordance with 28 U.S.C.A., Sec. 875, review upon appeal is confined to rulings of the Court in the progress of the trial, if excepted to at the time and duly presented by bill of exceptions, and to the question whether the facts found by the Court support the judgment.

As we understand, the power of the appellate court is restricted within these limits, as found by the Circuit Court of Appeals, citing:

Lewellyn vs. Electric Reduction Co., 275 U. S., 243.
Fleischmann Co. vs. United States, 270 U. S., 349.
Harvey Co. vs. Malley, 288 U. S., 416.
Eastman Kodak Co. vs. Gray, 292 U. S., 332.

Though the Bill of Exceptions shows numerous objections to admission of evidence, which were overruled in the final judgment and exception allowed, none of these rulings were assigned as error. There was no motion by plaintiffs (appellants) for a judgment on the facts generally, none for finding of any special facts. It would therefore appear that assignments that the Court erred in finding special

facts cannot be considered on appeal, under Section 875, above cited.

Counsel repeatedly questions the holding of the Circuit Court of Appeals that the Court must accept the facts as found by the trial court, but as we understand Sections 773 and 875, no other course was open to that Court.

For the convenience of the Court, we copy from the Record the trial Court's Finding of Fact and Conclusions of Law. (Record, pages 434 to 440):

FINDINGS OF FACT

1. This is a suit in trespass to try title, involving the lands known as the Guayuco Banco, which the evidence in the case discloses was cut from Mexico to the United States during the year 1926, and eliminated in accordance with the treaty between the United States and Mexico, signed at Washington March 20, 1905, and proclaimed June 5, 1907, plaintiffs claiming title by virtue of a chain of conveyances from the sovereignty of the soil, to-wit, the Republic of Mexico, as well as by limitation, under the Mexican Statutes applicable thereto.

2. Under the holding of the Court as to the law in this case, it is probably unnecessary for the Court to rule upon the validity of plaintiffs' title prior to the expropriation thereof under the Constitution of 1917, but if necessary to pass and rule on same, the Court finds that the plaintiffs are shown to have record title to the land in dispute, under the laws of Mexico, at the time of the adoption of the Federal Constitution of 1917.

3. Neither the plaintiffs, nor their agents or employees ever had pacific, continuous, physical, public possession of the premises required by the laws of Mexico for the period of time

required by the laws of Mexico to vest title by prescription.

4. There was no evidence of pacific, continuous, public actual possession of the land by the plaintiffs or anyone through whom they deraigned title, for any period of time.

5. Neither the plaintiffs nor anyone through whom they deraigned title had permission to acquire or hold title within the zone in which the premises are situated on February 13, 1897, at the date of the deed from Bennett H. Davis to Shapleigh, Peck and Ranken.

6. The permit of A. L. Shapleigh, Charles H. Peck and Thomas H. Ranken to acquire and hold title to land within the prohibited zone, in which this land is situated, was issued and dated August 25, 1897.

7. None of the plaintiffs in the case at bar ever received or acquired the right to acquire or to hold title within the prohibited zone, with the exception of A. L. Shapleigh.

8. The Federal Constitution of Mexico of 1917, proclaimed May 1, 1917, authorized and directed the States of the Mexican Republic, including the State of Chihuahua, to pass agrarian laws to compel the division of large landed estates. (Latifundia).

9. In accordance with such mandate of the Federal Constitution of Mexico, the State of Chihuahua enacted such an Agrarian Law on May 25, 1922.

10. The proclamation and other legal proceedings by which the Governor of the State of Chihuahua undertook to expropriate the latifundium comprising "La Santisima", "San Antonio", "El Comedor" and "Vado de Piedra", were regular and in accordance with the then existing laws of the State of Chihuahua, and in all respects conformed to the requirements of the Constitution of 1917, and of the Agrarian Law of the State of Chihuahua.

11. That the tracts of land referred to in the above Finding 10 comprised approximately..... .....hectares, (..... acres), and constituted a latifundium, within the definition of the Agrarian Law of the State of Chihuahua.

12. That prior to the passage of the Agrarian Law of the State of Chihuahua, no portion of the land comprising the latifundium is shown to have been cultivated, occupied or inhabited.

13. That subsequent to the passage of the Agrarian Law and the expropriation of the latifundia, approximately 4,000 people have settled thereon.

14. The plaintiffs and those through whom they deraigned title were notified of the expropriation proceedings, and given the opportunity to comply with the Agrarian Law of the State of Chihuahua, and failed to do so.

15. In the course of the expropriation proceedings, the Governor of the State of Chihuahua officially determined that none of the plaintiffs were entitled to acquire or hold real estate within the prohibited zone, the prohibited zone being a strip of land twenty (20) leagues in width along the national boundary line.

16. The Constitution of 1917 and the Agrarian Law of the State of Chihuahua do not require that compensation be paid prior to or at the time of expropriation and taking of land by the State, or that payment for same be then provided for.

17. Claim for compensation for land expropriated under the Constitution of Mexico and the Agrarian Law must be urged and collected through the courts of Mexico, having jurisdiction to determine the amount thereof and who is entitled thereto.

18. Plaintiffs lost all title which they had to the lands in question by virtue of the Constitution of 1917, of the Agrarian Law of the State of Chihuahua of 1922, passed in obedience thereto, by the proclamation and expropriation proceedings by the Governor of the State of Chihuahua, of date March 5, 1925, and the title to such land thereby became vested in the State of Chihuahua and subject to sale and disposition in accordance with the laws of said State.

19. In accordance with the terms and provisions of the laws of the State of Chihuahua and of the Republic of Mexico, relating thereto, the defendant, Pascual C. Mier, on March 14, 1925, filed with the proper authorities his application to purchase from the State of Chihuahua certain lands, embracing the lands in controversy, and thereby acquired a right and interest in the same.

20. Said land, at the time of its expropriation, and at the time defendant Pascual C. Mier filed application to purchase same, was located in the State of Chihuahua and under the sovereignty and jurisdiction of that State and of the Republic of Mexico.

21. The land in controversy, designated as El Guayuco Banco, was cut from the South or right bank of the Rio Grande to the North or left bank of the Rio Grande by an avulsive change in the course of the Rio Grande in the year 1926, and constitutes a true banco, within the meaning of the banco elimination treaty proclaimed June 5, 1907.

22. That by the treaties applicable and the decision of the International Boundary Commission, promulgated March 3, 1930, dominion and jurisdiction over the Guayuco Banco passed to the United States of America, giving this Court

jurisdiction over the controversy involving the title to the land here in question.

23. The Constitution of Mexico of 1917, Article 27, proclaimed May 1, 1917, relating to the Agrarian Laws and directing the enactment of such by the various Mexican States, precluded plaintiffs' claim to the land in controversy from ripening into title by possession, even if it could be held that the plaintiffs had been in possession of said land, which the Court does not hold.

24. The Agrarian Law of the State of Chihuahua, enacted May 25, 1922, is constitutional and valid under the Constitution and laws of Mexico.

25. The expropriation proceedings and the proclamation and acts of the Governor of the State of Chihuahua, of date March 5, 1925, are regular and valid under the laws of Mexico, where the land in controversy was located at the time such action was taken.

26. The State of Chihuahua, Republic of Mexico, was vested with jurisdiction and sovereignty over the land in controversy at the time of the proclamation of the Constitution of 1917, and at the time of the expropriation proceedings by the State of Chihuahua.

27. By virtue of the expropriation proceedings, the plaintiffs became divested of any and all title they may have had in and to the lands in controversy.

28. The Agrarian Law of the State of Chihuahua has been held and construed to be valid and constitutional by the courts of last resort of the United States of Mexico, and by the superior courts of the State of Chihuahua.

29. None of the plaintiffs are shown to be citizens of

the Republic of Mexico, but are foreigners thereto.

30. The plaintiffs were represented by counsel in the expropriation proceedings, but failed to comply with the orders of the Governor to present proof of title and of the right to hold title within the prohibited zone, and they thereafter presented to the International Claims Commission, United States and Mexico, a claim for the restitution of the lands and for damages.

CONCLUSIONS OF LAW

1. Plaintiffs have not shown title in themselves to the lands in controversy.

2. The Agrarian L[illegible] of the State of Chihuahua of May 25, 1922, is a valid and constitutional act authorized by the Federal Constitution of Mexico of 1917, proclaimed May 1, 1917.

3. The proclamation and other legal proceedings of the State of Chihuahua and the Governor thereof, relating to the expropriation of the land in controversy, were regular and legal under the then existing laws of the State of Chihuahua, and divest plaintiffs of any and all title, if any they had, to the premises in controversy.

4. By virtue of the expropriation proceedings of the State of Chihuahua and the Governor thereof, acting under the laws of said State, the title to the land in controversy became vested in the State of Chihuahua, and subject to sale in the manner prescribed by the then existing laws of the State of Chihuahua.

5. Under the Constitution of Mexico of 1917, foreigners had no right to acquire title to real property in the prohibited zone.

6. Under the Constitution of Mexico of 1917, payment for land expropriated for public use is not required to be made in advance, or at the time of such expropriation, but payment therefor may be made subsequent to the taking

7. Claim for compensation for land expropriated under the laws of Mexico must be sought through the courts of Mexico, or, if sought by foreigners, may be sought through the political department of their Government.

8. Plaintiffs never acquired title to the land in controversy by limitation or prescription, under the laws of Mexico.

9. The land in controversy being shown to have been within the State of Chihuahua, Republic of Mexico, at the time of the expropriation proceedings, was subject to the sovereignty and jurisdiction thereof, and the validity of such proceedings must be determined by the laws of Mexico and by the courts thereof.

10. Title to the land in controversy having been vested in the State of Chihuahua by the expropriation proceedings, was subject to purchase under the terms of the expropriation law, and the defendant Pascual C. Mier having filed application to purchase the same on March 14, 1925, he thereby acquired a legal right to and interest therein.

11. By virtue of the treaties applicable and the action of the International Boundary Commission, promulgated March 3, 1930, defining and declaring the Guayuco Banco, the dominion and jurisdiction over same passed to the United States of America, giving this Court jurisdiction over this controversy, involving the title to the lands in question.

SUMMARY OF THE ARGUMENT

"La Santisima", (of which the lands in controversy form a small tract of approximately 337 acres in extent, avulsively

cut to the United States in 1926), comprised a vast tract of land in the State of Chihuahua, Mexico, lying contiguous to the Rio Grande, being some 140 miles in length and two leagues in width, an area larger than the State of Rhode Island.

Plaintiffs claimed to deraign title from the Mexican Government, by virtue of a confirmation by the Federal Executive, dated October 29, 1864, purporting to confirm a grant alleged to have been made by the State of Chihuahua in 1859. The land lay within what is known as the prohibited zone, twenty leagues in width, along the National Boundary, within which, previous to the Mexican Constitution of 1917, no foreigner could acquire or hold title without the consent of the Federal Government previously granted.

The series of conveyances through which plaintiffs claimed title were in flagrant disregard of the mandatory provisions of Mexican law regulating the conveyance of real property.

Under the Federal Constitution of 1917, no foreigner could acquire title to real estate within the prohibited zone, though titles then valid could be held, subject to provisions looking to the ultimate disposal thereof.

In attempting to disintegrate vast landed estates, (latifundia, throughout the Republic, and to distribute the land among the people, the Constitution of 1917 enjoined upon the several States of the Mexican Confederation the passage of agrarian laws, providing for the subdivision and sale by the owners of these vast estates, and in the event of the failure of the owners so to sub-divide and sell, for the expropriation of the latifundium and its sale to purchasers thereof, the owners to be compensated by the issuance of bonds provided by the Constitution.

From the date of the alleged grant of this vast estate in 1859, to the date of its expropriation on March 5, 1925, no acre of this vast estate is shown to have been cultivated, occupied or inhabited. (It is interesting to note that since its expropriation, more than 4,000 people have settled thereon).

In 1924 proceedings were instituted by the Government of Chihuahua to compel the sub-division and sale of "La Santisima", and the plaintiffs herein were duly cited as the claimants and apparent owners of title to said lands. The proceedings by virtue of which this latifundium was expropriated are set forth in full in the record. (Record, pp. 253 to 268). The plaintiffs appeared before the Governor, by counsel and by their engineer, employed to survey and subdivide the land. They were called upon to produce evidence of their title, and also of their right to hold title within the prohibited zone. They requested and received delays or postponements, first, for a period of three months, and again for a period of two months, but they failed to produce either evidence of their title or of their right to hold title within the prohibited zone, and to this day only one of the plaintiffs, A. L. Shapleigh; has ever exhibited evidence of a permit to acquire land within the prohibited zone, that permit having been first produced on the trial of this case in the United States Court.

The expropriation proceedings, conducted by the Governor of Chihuahua, under the provisions of the Mexican Constitution and Mexican law, and, as the trial Court found, in strict conformity thereto, were in no sense ex parte, the requirements appear to have been in every respect just and reasonable, and, in spite of delays granted them for the purpose, no effort appears to have been made by the plaintiffs to meet the reasonable requirements of the State and Federal

law. On the contrary, plaintiffs filed a claim before the United States-Mexican Claims Commission for restitution of these lands and damages therefor, and there, so far as the record discloses, the claim is now pending. Should they sustain their claim before the Claims Commission and recover the land or damages therefor, and sustain a recovery in this suit, there would be a double recovery as to the lands in controversy.

Subsequent to the expropriation of "La Santisima", the defendant, Pascual C. Mier, applied to the State Government to purchase a portion of the lands, which application was filed and accepted. Under the laws of Mexico, being the first applicant to purchase a given tract, defendant acquired a vested right, which would ripen into title upon payment of the purchase price fixed by the State. Counsel ridicules the price paid for that portion of the land comprised in the Guayuco Banco, but the agrarian law set forth in the record, (Record, pp. 329 to 351), discloses that the purpose of sale was not for profit, but for sub-division and settlement and development, at the taxable value of the land, plus ten per cent.

We contend that the courts of this country will not sit in judgment upon the proceedings of a foreign State or the official acts of its duly constituted authorities with reference to the title to property located within that jurisdiction and subject to the sovereignty of that State, and that this doctrine is especially applicable to the title to real estate; that foreigners owning property within a nation cannot complain of the adoption, enactment or enforcement of the laws of that country, if they bear with equal justice and equal burden upon the citizens or subjects of that country; that if a foreigner is aggrieved by the governmental acts of any nation, performed within its own territory and sovereignty, such foreigner must

seek redress either in the courts of the country or through the political department of his own government; that not only did the treaty or Convention between the United States and Mexico not provide a different rule, as contended by plaintiffs in their brief, but that by the terms of Article 9 of the Convention, it is expressly provided that when the claim of an American claimant to lands is sustained by the Commission, the Commission shall at the same time ascertain the value of the land, and the Government of Mexico, at its option, might restore the land or compensate the owner therefor.

In the instant case the plaintiffs, while presenting their claim through the Claims Commission for the restitution of "La Santisima", including the lands now embraced in the Guayuco Banco, and for damages therefor, seek in this case to deprive the defendant of his title and rights, acquired under Mexican law, when the land was in Mexico.

Under Title 28, U.S.C.A., Sections 773 and 875, we regard the Findings of Fact by the trial Court as conclusive upon the issues of fact found. Except that, believing that the conditional finding of plaintiffs' record title is not such a special verdict as the law contemplates, we set forth in this brief the reasons why we think that the Court may inquire into the validity of plaintiffs' title prior to 1917, and point out what we conceive to be the fatal defects in that title. This case, however, as we conceive it, is a suit in trespass to try title, which is a statutory proceeding, under the laws of Texas, and the plaintiffs must recover upon the strength of their own title, and upon failure to prove such title, judgment is for the defendant, as was rendered in this case.

Plaintiffs excoriate the Mexican Government for not having compensated them for the lands expropriated, but they utterly failed to lay before the Governor of Chihuahua

proof either of their title or their right to acquire or hold title within the prohibited zone, and the record does not disclose that they have ever sought, in the courts of Mexico or before the Executive Departments, to vindicate the title which they had wilfully or negligently failed to produce, when lawfully called upon so to do, and that in the face of a direct finding, (in a proceedings in which they were represented by counsel and were participating), that they had failed to produce evidence of title or the right to hold title, and in the face of the Executive Decree that the owners of the land should be indemnified, in accordance with the Federal Constitution and the agrarian law of the State, they appear to have made no move whatever to vindicate their title or to claim compensation therefor, except in the proceedings now pending before the Claims Commission.

Defendant does not question that sovereignty over the Guayuco Banco passed to the United States sometime during the year 1926, when it was cut from Mexico. This case being a statutory action of trespass to try title, brought and tried in accordance with the statutes of Texas applicable, plaintiffs must recover on the strength of their own title, if any. If they fail so to do, the defendant is entitled to judgment and consequently the argument naturally divides itself into two general parts:

(a) An inquiry into the title of plaintiffs.
(b) An exposition of the title of defendant.

ARGUMENT

Part I.

THE PLAINTIFFS' TITLE

The inquiry into plaintiffs' title involves, we believe, three separate and distinct propositions of law:

First: Did plaintiff ever acquire valid record title, or title by prescription, to the premises involved?

Second: If title was ever in the plaintiffs, did they lose it by the expropriation proceedings?

Third: Appellants having been deprived of the property by act of another nation, acting within its territory, may they challenge the taking in the courts of this country?

FIRST

Appellants in their brief rely upon the proposition that the court affirmatively found they had title at the time the present Constitution of Mexico was adopted, to-wit, May 1, 1917. Apparently, they rely for this upon the second finding of fact of the trial court, which reads, as follows, (R. 434):

> "Under the holding of the court as to the law in this case, it is probably unnecessary for the court to rule upon the validity of plaintiffs' title prior to the expropriation thereof under the Constitution of 1917, but if necessary to pass and rule on same, the court finds that the plaintiffs are shown to have record title to the land in dispute, under the laws of Mexico, at the time of the adoption of the Federal Constitution of 1917."

Fully realizing that there can be no cross assignments of error asserted unless an appeal be taken, defendant nevertheless believes there are four reasons why the record title of plaintiffs may be inquired into.

First: It was not necessary for the court to hold as a fact, or as a matter of law, that plaintiffs ever had valid record title prior to 1917, because the court expressly held that in the event they ever did have title, they lost it through the expropriation proceedings. This would have been sufficient to dispose of the case and in the language of the trial court it expressly held that only "if necessary" would it pass

upon the question of the validity of plaintiffs' title prior to 1917. Inasmuch as it was not necessary to pass upon that title to obtain the result the trial court did, this court may inquire into the title alleged to be held by plaintiffs.

Second: The above quoted finding of the trial court is a finding of fact and is not included in the conclusions of law of the trial court. We believe that the validity of a title necessarily calls for a conclusion of law and the court did not conclude as a matter of law that the muniments exhibited conveyed a valid, legal title. Possession of title is a fact, but instruments showing the validity of a record title call for a conclusion of law concerning the muniments on which it rests.

Third: This court may inquire into the validity of plaintiffs' title prior to 1917, or at any time, for the reason that it is a well established principle of law that the Appellate Court will not reverse a case where the right result has been obtained, even though the reasons whereby such result was obtained may be erroneous. Consequently, if the decision of the trial court was correct, even though his reasoning was wrong, the case should be affirmed.

Fourth: This being a statutory action of trespass to try title, plaintiffs must recover, if at all, solely upon the strength of their own title and consequently we submit that that this court will scrutinize whatever title the plaintiffs may have had.

Having asserted the foregoing reasons for inquiring into the plaintiffs' title, we now turn to such inquiry.

The deed from Ignacio MACMANUS, dated December 6, 1886, to Bennett H. Davis, conveyed no title, for the reason that it affirmatively appears from the instrument itself, and from the official endorsement made on it, that it must be

accompanied by a particular description of the land and a map showing the land sought to be claimed or held under the instrument, and no such map accompanied the instrument and no map appears in the record thereof. (R. 73-82.)

That said deed from MACMANUS to Davis was wholly ineffective to convey title, for the reason that it affirmatively appears from the record above cited that the instrument was first tendered for record in 1924, after the adoption of the Constitution of 1917, and after the promulgation of the organic law putting Article 27 of the General Constitution into effect, and after the adoption of the Agrarian Law by the State of Chihuahua, wherein it is specifically required that before any alien may acquire a title within the prohibited zone, or before he may execute any transfer or cause the same to be recorded, or before any notary public may transcribe or record such a transfer, or that any public official may do any act or thing recognizing said transfer or purporting to give any validity to it, that he must first obtain permission from the Federal authorities in the City of Mexico to authorize the execution and recording of such instrument and the transfer or acquisition of any right thereunder.

The above objections were duly offered to the introduction of such instrument, as appears from page 73 of the Record, and the instrument was permitted to be read, subject to a reserved ruling of the court as to its admissibility.

Article 53 of the Agrarian Law is specific on this question. (R. 345.)

The Agrarian Law was promulgated May 25, 1922. The MACMANUS deed above referred to was registered April 14, 1924.

Section 53 of the Agrarian Law reads as follows:

"ARTICLE 53. Every transfer of ownership of land which may be made after the promulgation of this law, and by virtue thereof, shall be communicated to the Executive of the State, to which end the interested parties in each case, shall give proper notice to the Department of State, attaching the map and the necessary data for the identification of the property, the subject of such contract.

"To which end the notaries shall not authorize any written instrument with reference to such transfers unless there shall be exhibited to them the evidence which has been noted concerning the procedure of the Department of State.

"Likewise, those in charge of the public registry of property shall not inscribe or record any title of said transfers without the respective 'testimonio' (certified copy), which shall state that said requisite has been complied with, or in case of a private instrument, without the evidence referred to accompanying such private instrument.

"Violation of this ruling shall render the title null, and in such case the record thereof also."

It is respectfully submitted that the deed from MacManus to Davis, by virtue of the express provisions thereof, was incomplete and lacked essential legal requirements, as is shown in the Fifth Paragraph thereof, until Davis should present the "testimonio" thereof with a supplement which explains those requirements and even the corresponding maps." (R. 79.)

It is obvious that the required supplement and "testimonio" were not made before its date, March 5, 1924. Waiving the question as to whether such action could be taken subsequent to the death of Mr. Bennett H. Davis, which occurred during the month of May, 1897, (R. 394), it is obvious that

the supplemental "testimonio" was essential to the validity of the deed from MacManus to Davis. It would seem that the last paragraph of Article 53 above quoted disposes of the validity of the MacManus deed.

The deed from Bennett H. Davis to Thomas H. Ranken, Charles H. Peck and Alfred L. Shapleigh, (R. 119-124), is not a valid instrument, under the laws of Mexico, for the following reasons, to-wit:

(a) Said deed shows utter lack of mutuality, having been executed in El Paso, Texas, in conformity with the laws of Texas, perhaps, but wholly without regard to the Mexican Statute prescribing the essentials of such instruments, in that said deed shows upon its face lack of the mutuality of contract required by the laws of Mexico and the State of Chihuahua, and is not executed, as the law requires, by the grantee, as well as the grantor.

(b) Said deed from Davis to Ranken and others was invalid upon the face thereof, because it did not show the capacity of the grantees to enter into such contract, and it affirmatively appears from the record that neither Ranken, Peck nor Shapleigh, at the date of said deed, had capacity to acquire land within the prohibited zone.

(c) It affirmatively appears from the copy of said instrument and the protocolization thereof (R. 126), that said instrument was never filed for regist and was never registered in Mexico until the 13th day of July, 1922, which was after the promulgation of the Agrarian Law, and the instrument shows upon the face thereof that Article 53 of the Agrarian Law was not complied with.

For the convenience of the Court we will quote here the articles of the Civil Code of the State of Chihuahua which,

in our opinion govern the validity of the deeds from MacManus to Davis and from Davis to Ranken and others. The references are to the Articles of the Code of 1882, by number, it being understood, as testified by the experts, that the words "State of Chihuahua" should be substituted for "Federal District" and the "Territory of Lower California," and, for convenience, the words "State of Chihuahua" have been substituted herein.

> "Art. 13. With regard to real estate (immovables) situated in the State of Chihuahua, the Mexican laws shall govern, although such immovables may be owned by foreigners."
>
> "Art. 14. With regard to the form or exterior solemnities of contracts, wills and every 'public instrument', the law of the countries in which they shall have been executed shall govern. Nevertheless, Mexicans or foreigners residing outside the State of Chihuahua, are at liberty to subject themselves to the laws and formalities prescribed by Mexican law, in those cases in which the act has to be put into execution within those demarkations."
>
> "Art. 16. The obligations and rights which arise from contracts or wills executed in a foreign country by Mexicans of the State of Chihuahua, shall be governed by the provisions of this Code, in case such acts are to be performed within the demarkations referred to."
>
> "Art. 17. If the contracts or wills spoken of in the preceding article should have been executed by a foreigner and have to be carried into effect in the State of Chihuahua, the maker shall be at liberty to elect as to the law to which the internal solemnity of the act has to be subject, in respect of an interest which consists of personal (movable) property. *With regard to real property, the provisions of Art. 13 shall be observed." (Italics ours.)*

"Art. 1279. In order that a contract may be valid, it must have the following conditions:

I. Capacity of the contracting parties;

II. Mutual consent;

III. That the subject matter of the contract be lawful;

IV. That it shall have been entered into with the external formalities which the law requires."

"Art. 1286. The consent of those who contract must be clearly shown."

"Art. 1287. He only who has a physical inability to speak or write can express his consent by other unquestionable signs."

"Art. 2920. A contract of purchase and sale does not require for its validity any special formality, except when it pertains to immovable property."

"Art. 2921. A sale of an immovable property, the value of which does not exceed five hundred dollars, can be made by a 'private instrument' which the vendor and the purchaser shall sign in the presence of two known witnesses."

"Art. 2922. If any of the contracting parties should not know how to write, another person, not under legal disability, shall sign it in his name, and at his request, but none of the witnesses can sign in the same manner, (that is, through another person)."

"Art. 2923. Two originals shall be formed of such instrument, one for the purchaser, and the other for the public registry, both to bear the corresponding stamps."

"Art. 2924. If the value of the immovable property exceeds five hundred dollars, the sale shall be reduced to a deed made before a notary (public writing)."

The requirements of the preceding articles would seem

to be too clear and specific to require expert testimony to elucidate them. Nevertheless, Mr. Mena Castillo and Mr. Fausto E. Miranda analyzed the several articles of the statute and testified that with reference to conveyances of real estate situated in the State of Chihuahua, the laws of Mexico and of the State of Chihuahua governed; that the formalities demanded by the statutes must be complied with; that the instrument must be in writing; that the capacity of the parties to the contract must be shown in the instrument; that mutuality must be shown by the signatures of both parties to the deed, either acting in person or through their duly authorized representatives.

We are aware that Mr. Valenzuela undertook, with great volubility, to explain away, negative and nullify the language of the statutes, but as against his enthusiastic efforts in this direction, we submit with confidence the sober statements of the law by two profound lawyers, whose statements of the law are themselves in exact accord with the letter and spirit of the statutes; and who are not forced into wordy and more or less comprehensible dissertations attempting to explain away the plain language of the statute.

It would be strange indeed if the law of the State of Chihuahua did not govern transfers of real estate situated within that sovereignty.

> "It is the universal rule of the common law that any title or interest in land or in other real estate, can only be acquired or lost agreeably to the law of the place where the same is situated."

Bouvier's Law Dictionary, Baldwin's Century Edition, citing: 6 Pick. 286; 1 Paige Ch. 220; 2 Ohio 124; 5 B. & C. 458; 6 Madd. Ch. 16; 10 Wheat. 192, 645; 1 Gill. 280; 6

Binn. 559; Storey, Conflict of Laws, Secs. 365, 428; 152 U. S. 65; 134 Id. 316; 127 Id. 719.

The *lex rei sitae* governs as to the capacity of the parties to any alienation, whether testamentary or *inter vivos*.

Defendant has no desire to reflect upon Mr. Valenzuela, doubtless he filled high administrative offices with satisfaction, but as a legal expert he inspires curiosity, rather than conviction. During his first day's testimony he was not aware of the Chihuahua Code of 1882. He was definitely of opinion that the first Code was that of 1898. (R. 46.) On the following day, when the Code of 1882 was presented to him, he adopted it with more agility than perspicuity.

We have copied in the preceding pages the Articles from the Civil Code of the State of Chihuahua which govern the conveyances in the instant case. We have read with attention the testimony of Mr. Valenzuela, and, we understand him to say that if the deed from Davis to Ranken and others was sufficient to convey title in Texas, it would be sufficient to convey title to land in Chihuahua. We cannot reconcile his statement with Art. 13 of the Chihuahua Civil Code, which we have quoted verbatim above. We cannot reconcile his statement with what we conceive to be the universal rule among nations, i.e., that acquisition and holding of title to real estate is governed by the *lex rei sitae*.

It is, in the language of Mr. Jose Mena Castillo appearing upon pages 358 and 359 of the record, expressed where he aptly sets forth certain rules of statutory construction identical with those in effect in our country and where he states Articles 14 and 18, when read in connection with each other apply to only instruments executed outside of Mexico. Why else was the additional language put in Article 18, to-wit,

"But in effect to real estate the same shall be governed by Article 11"? Unless this was meant to apply to instruments dealing with real estate matters outside of Mexico the language would not have been necessary in the statute. These Articles are 17 and 13 page 24 this brief.

Would any Texas lawyer suggest that the deed of a married woman, resident in St. Louis, which was not acknowledged in accordance with Texas law, would be sufficient to vest title to land in Texas?

See Cross-Examination of Mr. Valenzuela, Tr. of Evidence, pp. 252 to 257.

See testimony of Mr. Mena Castillo, Tr. of Evidence, pp. 281 to 292 and 301 to 302.

The deed from Davis to Ranken and others lacked the essential attribute of showing the capacity of the purchasers to acquire title to land within the prohibited zone.

There is no pretense of effort in that deed to show mutuality of contract; nor capacity of grantor to convey, much less of capacity of grantees to acquire. Will this Court strike from the Civil Code of Chihuahua Arts. 13, 17, 1279, 1286, 1287, 2921, 2922 and 2923? Even Mr. Valenzuela admits mutuality is necessary (R. 45).

The testimony is unequivocal that under the law of 1856, still in force until nullified by the Constitution of 1917, (which did away with the permit to foreigners to acquire land within the prohibited zone), no foreigner could acquire such title without *previous* permit so to do.

The Act of February 1, 1856, Art. 2, reads as follows:

"No foreigner shall, without the *previous* permit of the Supreme Government, acquire real estate (immov-

ables) in the border states or territories unless at twenty leagues from the frontier line." (R. 367.)

There was and is nothing peculiar or unreasonable in such a law. Its counterpart, only more broad, can be found in the statutes of the States of this Union. Mexico had the right to define who should hold title to lands in Mexico, and to prescribe the conditions.

AUTHORITIES

12 Corpus Juris, (Conflict of Laws, Sec. 40), states the *Lex Loci Rei Sitae* as follows:

> "The lex situs, lex loci rei sitae, or law of the place where the thing is situated, is universally regarded as furnishing the rules governing the transfer, encumbrance or devolution of real or immovable property, and generally as to tangible personality or movables; but since movables may have both an actual and a fictitious situs, being sometimes regarded as present at the domicile of the owner, the law of such domicile is sometimes resorted to as furnishing the rules for the solution of questions as to its title and ownership which in effect amounts to an application of the law of the situs. Under these rules the lex situs governs as to the tranfer of land, covenants running with the land, conversion of property from realty in personalty, construction and operation of contracts for the sale of land, and in general as to the construction of deeds; the validity, construction, and effect of mortgages of real estate; the violation of the rule against perpetuities; the validity of contracts relating to land when tested by the statute of frauds; whether a conveyance of land is fraudulent as to creditors; the validity and sufficiency of execution of a power as to realty; the validity of wills as to realty; the validity of trusts; the capacity of a married woman to alienate her separate real property; the respective rights of husband and wife in realty; and as to the

widow's right of dower in her husband's lands. So with regard to movables, the lex rei sitae is ordinarily held to control as to the validity and effect of a chattel mortgage, or of a contract of pledge or a warehouse receipt. Further applications of the law of the situs have been made in determining the liability of property to be sold under legal process, the validity of a transfer of property resulting in a preference to a creditor of an insolvent, whether a partnership has been formed, and as governing the collection and distribution of the assets of a decedent, and the administration of insolvent estates. The obligation of an inn-keeper is to be determined by the law of the country where the inn is."

12 Corpus Juris, pp. 477, et seq., (Conflict of Laws), Secs. 75 to 84, reads as follows:

"Sec. 75. C. IMMOVABLES—1. IN GENERAL. The exclusive jurisdiction which each sovereignty possesses over land within its borders requires that its acquisition, transfer, and devolution be governed by the law of its situs, and this rule applies generally to all property classed as immovables, and operates between the several states of the United States as well as between countries entirely foreign to each other. The principle of comity does not require a state to regard the laws of any other state, so far as they may affect contracts in relation to real estate situated in the former state."

"Sec. 76. 2. CONTRACTS INVOLVING—a. IN GENERAL. It would seem on principle that contracts, although the subject matter involved is immovable property, should be governed, in so far as the personal rights and obligations of the parties as distinct from their effect as transferring the title to the immovable property are concerned, by the proper law of the contract as in the case of other contracts; and there are English, and some American, authorities to this effect. The rule supported by the weight of authority in the

United States, however, appears to be that executory contracts relating to real property are governed as to their requisites, validity, and effect by the law of the place where the realty is located."

"Sec. 77. b. REAL COVENANTS. In an action for the breach of a covenant, the construction and force of the covenant, including what amounts to a breach, and the rule as to damages, must be governed by the lex situs. So the question whether a deed contains a covenant running with the land is to be determined by the law of the state where the land is situated."

"Sec. 78. c. PERSONAL COVENANTS. Following the minority rule stated in a preceding paragraph there are American cases holding that the rule that the lex rei sitae controls as to the title and conveyance of immovable property does not apply to personal covenants, not purporting to be conveyances, between persons outside the jurisdiction of the state, although concerning property within it. So according to some of the authorities, where a contract is made in one state for the purchase of land located in another state, and the money is to be paid in the state in which the contract is made, the lex loci rei sitae will govern as to the title to the land and the lex loci contractus, as to the rights of the parties under contract. Another line of authorities, while in terms applying the lex loci contractus, in effect applies the lex rei sitae, by holding that the law of the place of performance is the governing law of the contract, and that the place of performance is in the state in which the land is situated. This rule has, for example, been applied in determining the damages recoverable for breach of a covenant in a deed. In case a personal covenant is asserted by way of an estoppel, however, it would seem that on principle, its operation and validity should be controlled by the lex loci rei sitae."

"Sec. 79. 3. TRANSFER INTER VIVOS—a IN GENERAL. The law of the sovereignty within

whose limits immovables are situated (lex loci rei sitae) controls as to their transfer. The sufficiency of a deed to pass title must be determined by the lex rei sitae, and this also is the law which must be resorted to to determine the construction and effects of deeds. So in case of a conflict between the law of the domicile of the parties and the law of the situs, it is held that the latter will control as to the capacity to contract with reference to immovables."

"Sec. 80. b. INVOLUNTARY TRANSFER. A purely statutory passing of title, such as under bankruptcy or insolvency acts, will not affect immovables situated outside the jurisdiction. When the law of a foreign country places a restraint on the alienation of the property of a debtor situated in such country, an equity arising on a contract entered into in respect of such property cannot be enforced against the lex loci rei sitae."

Sec. 81. c. ASSIGNMENT FOR CREDITORS. A statutory assignment for the benefit of creditors is inoperative as to real estate situated in another state. A voluntary assignment for the benefit of creditors will pass title to real estate situated in another state where it is adequate as to its form and parties to pass title to real property according to the laws of the rei sitae. So a foreign assignment for the benefit of creditors will protect the real estate in another jurisdiction from the claims of non-resident creditors, although it is not in accordance with the law of the situs, in case such law relates solely to domestic assignments. And this has been held to be true, notwithstanding that under the law of the place where the assignment is made preferences between creditors are permitted, while according to the law of the situs such preferences are forbidden, in case there is no statute inconsistent with such a disposition of the property among foreign creditors and the rights of no domestic creditors are involved."

"Sec. 82. 4. ENCUMBRANCE. The validity of a mortgage of real estate and its construction and effect are controlled by the law of the state where the mortgaged property is situated, although the mortgage is executed and the parties reside in another state."

"Sec. 83. 5. INTESTATE SUCCESSION. The law of the situs controls as to the descent of real property in case of intestacy; it is this law which is to be resorted to to determine the persons entitled to take as heirs."

"Sec. 84. 6. TESTAMENTARY DISPOSITION. As a general rule, the validity of a will disposing of immovables is goverend by the law of the place where the property is situated. So the lex rei sitae controls as to the power of the testator to exclude natural or adopted children from sharing in his estate. So the intention of a testator to disinherit an after-born child must be determined; so far as affecting real property, by the law of the state where such property is situated."

Clark v. Graham, 6 Wheat. 577; 5 Law Ed. 334.
Barnett v. Pool, 23 Texas 517.

The ratification, description and map required by the deed from MacManus to Davis was not executed nor registered until more than twenty-five years after the death of Major Davis, and after the promulgation of the Agrarian Law. The deed from Davis to Ranken and associates was not registered until after the promulgation of the Agrarian Law.

The Agrarian Law (Sec. 53) prescribed, in no uncertain terms, the conditions upon which such instruments could be registered. The state was ignored with lordly disdain. The last paragraph of Sec. 53 announces the penalty for such disregard:

"The violation of this ruling *shall render the title null,* and in such case the record thereof also."

We respectfully request the Court to read the entire proceeding by which the Government of the State of Chihuahua expropriated La Santisima. (R. 263-269). The action of the Government in expropriating this Latifundium will be considered more fully in the second part of this brief in which we present the title of the defendant, but at this time, that the Court may see that no hasty or ex parte action was taken; that the plaintiffs made no serious effort to defend or perfect their title, when called upon to do so; that the State Government found as a matter of fact that plaintiffs held no title; and that it was justified in so finding.

Before passing from consideration of the instruments we have been studying, it is proper to call attention to, and to emphasize the fact that plaintiffs' enthusiastic witness could not sustain the validity of the MacManus and Davis deeds, or the registration thereof, except by maintaining the unconstitutionaltiy of the Agrarian Law of the State of Chihuahua. Unfortunately for plaintiffs' theory of the case, this Court will not, under the decisions of the United States Supreme Court, inquire into the constitutionality of the laws of a foreign country or the acts of another sovereign power as applied to property within the territorial jurisdiction of that power.

AUTHORITIES

Ricaud v. American Metal Company, 246 U. S. 303; 62 Law Ed. 733.

Oetjen v. Central Leather Co., 246 U. S. 269; 62 Law Ed. 726.

Compania Mineral v. Bartlesville Zinc Co., 115 Texas 21; 275 S. W. 388; 41 A. L. R. 737.

Terrazas v. Holmes, 115 Texas 32; 275 S. S. W. 392, affirming 225 S. W. 848.

This question will be considered at more length in the second part of this brief, but it is appropriate to refer to it here because plaintiff's expert was forced, again and again, to fall back upon the unconstitutionaltiy of the Agrarian Law, in order to sustain the validity of plaintiffs' title.

Against this opinion of Mr. Valenzuela, we offer the opinion of Mr. Mena Castillo. (Tr. of Ev. R. 351-365). The opinion of Mr. Miranda. (Tr. of Ev. R. 365-381). The fact that the Supreme Court of Mexico has five times held the Agrarian Law (R. 329) constitutional, (R. 327) wherein that court holds:

> "The decisions of the executive power in agrarian matters are wholly final. If they participate of the character of judicial decisions which because they create or extinguish rights produce the effect of res adjudicata and may not be modified or revoked not even by the President of the Republic because they would violate vested rights of patrimonial character, and property would have no stability."

And finally, and as we think conclusively, this Court has decided that our courts will not pass upon the question adversely to the judicial and administrative acts of the government, in whose territorial jurisdiction the property lies at the time of the judicial determination or administrative act.

Moreover plaintiffs' title papers, constituting Exhibits 20 to 28, inclusive, are inadmissible in evidence and are not relevant or material for any purpose whatever, because they do not purport to have been registered as muniments of title in the manner and form required by the laws either of the State of Texas, where this suit is brought, and where the land

is now situated, nor in the Republic of Mexico, nor the State of Chihuahua, where the land was situated before it was avulsively cut to the United States. These papers purport to show some character of right or authority in certain parties named therein as heirs, executors, adminstrators or trustees of certain parties named therein, but in no instance has ancillary administration been asked for either in Texas or in Mexico.

No Executor, administrator or Trustee has any extra-territorial authority beyond the jurisdiction of the court or state where a will is probated or adminstration is had. Reciprocal statutes have been enacted in this State and others, in a spirit of comity, which permit the holders of such trust powers to function in other sovereignties, upon compliance with such reciprocal statutes, but no such steps have been taken in the instant case. There is not before the Court one scintilla of evidence to prove the relationship of any of the parties named therein to either Charles H. Peck or Thomas Ranken, except the self-serving declarations contained in the instruments, none of which have been probated either in Texas or in Mexico.

AUTHORITIES

14 Texas Jur., Sec. 790, p. 628, reads as follows:

> "Effect of Foreign Adminstrations. Sec. 790. IN GENERAL. Inasmuch as real and personal property belonging to a non-resident decedent and having its situs in this State is governed in most aspects by the laws of Texas and not by those of the foreign state, it is apparent that proceedings in a foreign domiciliary administration can have on such assets no further effect than that given by the Texas statutes. Thus the probate in a foreign jurisdiction of a will that attempts to

dispose of property having its situs in Texas does not of itself give any validity to the will here; nor, in the absence of a statute so providing, is any such will admissible in our courts as evidence affecting the title to lands in this state, although it seems that it may be so used with reference to personal property.

"It is elemental law that an executor or administrator must derive all his authority from the laws of the sovereignty that appointed him. And inasmuch as probate courts have no extra-territorial jurisdiction, it follows that a personal representative, being merely the agent of the court of the state or county wherein he is appointed, is clothed with authority to administer only the assets that are within the jurisdiction of such court.

"Accordingly, it is settled by numerous decisions that letters testamentary and of administration have no legal force or effect beyond the territorial limits of the state in which they are granted. Nor will recognition be extended an executor or administrator, deriving his authority from another jurisdiction upon any principle of comity, for the obvious reason that, if such recognition were granted, a state might sometimes be called upon to enfore a foreign law to the prejudice and detriment of its own citizens."

Paschal vs. Aclin, 27 Texas, 173. (Leading Case).
Slaton vs. Singleton, 72 Texas, 209; 9 S. W., 876.

(The opinion in this case collates and analyzes the Statutes of Texas on the Registration of Foreign Probate Proceedings).

Lindahl vs. Thacker, 26 S. W. (2nd), 283.

The opinion in the last-mentioned case showing inability of representatives of Ranken and Peck to maintain this suit, (writ of error refused), in our opinion makes multiplication of authorities supererrogatory.

In this connection, reply will be made briefly to the proposition set forth in Plaintiffs' Brief, that is, that Shapleigh, as a tenant in common, has the right to recover the whole of the land. In the instant case it appears to be irrelevant to discuss the abstract proposition of law involved in plaintiffs' proposition.

It appears from the deed of Davis to Ranken and others, (R. 119), that Davis conveyed to Ranken thirty-two eighty-firsts (32/81) of the land; to Peck twenty-five eighty-firsts (25/81); to Shapleigh twenty-four eighty-firsts (24/81) thereof.

It is evident that plaintiffs are engaged in a desperate endeavor to overcome the obvious fact that no one of the plaintiffs, except Shapleigh, has or ever had a semblance of a right to acquire or hold title to land within the prohibited zone. Laying aside the fact that Shapleigh utterly lacked the *previous* permit expressly required by the statute as a condition precedent to acquiring title within the prohibited zone, it is a generous gesture indeed which this Court is asked to make, in permitting Shapleigh to recover for his co-tenants a title which they are disqualified to acquire or hold, or else to receive for himself title to an entire tract of land, in which the record shows he only purchased somewhat less than a one-third interest, for less than ten dollars.

In the light of the decision of the Government of the State of Chihuahua that none of the plaintiffs had title to the land, as set forth in the expropriation proceedings, (R. 253-268), and the decisions of the Supreme Court of the United States cited herein, we question whether the judgment of the Court will be as generous as plaintiffs request.

SECOND

The plaintiffs who sue as heirs or representatives of Ranken or Peck offer to the Court no legal evidence of heirship, nor of trusteeship, as executors, adminstrators or trustees. They offer no evidence of right to acquire or hold title to land within the prohibited zone. The permit to hold title within the prohibited zone is personal, cannot be alienated, is not transmissible by inheritance. (R. 317, 318, 360, 361, 371, 369).

Turning from the insufficiency of plaintiffs' record title we pass to their contention of title by limitation.

The attempt to bolster the fatally defective record title of the plaintiffs by the aid of Limitations must fail for two reasons:

a. Because there is not one scintilla of evidence that the plaintiffs or any of their predecessors in title ever had actual or physical possession of La Santisima for one year, one month, one week, or even one day.

b. The entire period which elapsed between the date on which Shapleigh, Ranken and Peck first obtained permit to acquire title to land in the prohibited zone and the date on which the Constitution of 1917 became effective was less than twenty years. The Constitution of 1917 prohibited the acquisition of title within the zone, absolutely and unconditionally. Permits to that end were done away with by the Constitution of 1917.

The two propositions will be considered in their order, but is pertinent to remark that the plaintiffs, (although they discuss the ten year period in their brief, and although their expert grew voluble on the subject), did not plead the ten-year Statute of Limitations. (See Plaintiffs' Petition).

The reason was obvious and was perhaps in their minds when they plead the case, although they seem to have forgotten it since. The statute is explicit as to the twenty-year statute in the instant case, assuming that plaintiffs were holding in good faith as will be succinctly set forth herein.

(a) Let us consider first the evidence of actual, or physical, or public possession of the land. La Santisima is a vast tract of land lying contiguous to the Rio Grande and extending from a point opposite Fort Hancock, Texas, to Ojinaga, a distance of more than one hundred and forty miles, a tract of land larger than the State of Rhode Island. Mr. Valenzuela glibly states that between the grant or confirmation of title to Laureano Muñoz and the institution of this suit title by twenty years statute of limitation could have been perfected twice. He could with equal force have said thrice. But, as was said repeatedly by the witnesses, possession to support limitation or prescription is a fact to be proved by evidence. We would not have supposed that plaintiffs intended to assert title by limitation, since they offered no witness and no fact in support of it, yet they devote a large portion of their brief and half of their citation of Mexican law to it.

Let us review the testimony:

On Novemeber 29, 1864, the President of Mexico seems to have confirmed Laureano Muños a grant of the land given him by the State of Chihuahua in 1819. (R. 17).

In 1886 the alleged heirs of Muñoz convey title to Ignacio MacManus, (R. 47) though without the requisite legal proceedings to establish heirship. No word of evidence is offered to show that Muñoz or his heirs ever had possession of the land, either in person or by tenant or agent, for even one day, or that they ever saw the land.

MacManus acquires title from Muñoz heirs by a deed executed in 1886, in the City of Chihuahua, hundreds of miles away from the land, which recites that all of the parties are residents of the Capital City of Chihuahua.

On May 10, 1887, Ignacio MacManus, acting through his brother, Tomas MacManus, sells the land to Bennett H. Davis, who acts through Telesforo Garcia (R. 51). The instrument is executed in Mexico City. Deed recites that B. H. Davis is a resident of El Paso, Texas, where the evidence shows he continued to reside, as a member of the firm of Davis, Beall & Kemp, until his death in May, 1897. (R. 111, 394).

There is no scintilla of evidence to show that MacManus or Major Davis ever saw the land, or occupied it, cultivated it, leased it, or even ran cattle on it for one year or one day.

On February 13, 1897, Major B. H. Davis, in El Paso, Texas, executes a deed, according to Texas forms, to Messrs. Shapleigh, Ranken and Peck, who are shown by the testimony to have been at all times residents of the City of St. Louis, Mr. Shapleigh up to this hour, and Ranken and Peck until they died.

The whole of the evidence as to possession of the premises by Shapleigh, Ranken and Peck is summarized in Plaintiffs' Brief, on page 3 thereof. If that testimony shows public, physical possession of the land for twenty-years, or any portion of it, we confess our labors in land suits have been misdirected.

The pertinent articles of the Chihuahua Civil Code are the following:

"Art. 919. Possession is the tenancy of a thing

or the enjoyment of a right by ourselves or by another in our name."

"Art. 920. The possession as a means of acquiring is either in good faith or bad faith."

"Art. 921. Those who are capable of acquiring are capable of possessing. Incapacitated persons possess through the means of their legitimate representatives, in conformity with the law."

"Art. 925. Possession gives to him who has it the presumption of proprietorship for all legal effects."

"Art. 926. The actual possessor who proves he has possessed in a former time has in his favor the presumption of having possessed in the intermediate time."

"Art 927. He who possesses or fundamentally believes that he possesses in virtue of a title sufficient to transfer the dominion is a possessor in good faith."

"Art. 928. He is also possessor in good faith who is ignorant of the viciousness of his title. Ignorance is presumed in this case."

"Art. 1168. All those who are capable of acquiring by any other title can acquire by positive prescription; minors and others incapacitated can do so by means of their legitimate representatives."

"Art. 1185. He who prescribes may complete the necessary term for his prescription, by uniting with the time which he may have possessed that which the person who transmitted the thing to him possessed, provided that both possessions have the legal requisites."

"Art. 1187. The necessary possession in order to prescribe must be: 1. Founded on a just title; 2. Of good faith; 3. Pacific; 4. Continuous; 5. Public."

"Art. 1189. He who alleges prescription must prove the existence of the title on which his right is founded."

"Art. 1190. Good faith is only necessary at the moment of acquisition."

"Art. 1193. Public possession is that which is enjoyed in a manner which may be known by those who have interests in interrupting them."

Art. 1194. All immovable properties are prescribed with good faith in twenty years, and with bad faith in thirty; save what is provided in Article 1176."

Art. 1240. The time for prescription is counted by years, and not from moment to moment, except in the case in which the laws expressly determines it to be so."

"ARTICLE 2—Transitory:—The periods of limitation which have been modified in this Code, which begin to run prior to January next, shall be calculated according to the Code which went into effect on March 1st, 1883; and those beginning to run thereafter shall be calculated in accordance with this Code." (Code of 1898.)

(b) Assuming that plaintiffs had been in actual public possession of the land from the date of their permit to acquire title, what would be the state of their title now?

Art. 921, Chihuahua Civil Code, makes it evident that only those who are capable of acquiring, are capable of possessing.

Permit to acquire title to land in the prohibited zone to Shapleigh, Ranken and Peck was dated August 25 1897. (R. 127).

The Constitution of 1917 was proclaimed May 1, 1917. Had plaintiffs been in possession, limitation must have failed to ripen into title by three months and twenty-five days.

The rule may seem harsh, but will any lawyer question that failure of the prescribed period, by even one day will be fatal?

But why speak of failure of possession by months or days, when there is no evidence of possession for one year, one month or one day?

We respectfully submit that plaintiffs have not shown title in themselves.

Inasmuch as the first part of this brief sets out three propositions or questions with regard to the title held by plaintiffs and inasmuch as the question of whether plaintiffs ever lost title, if any they ever had, is involved with the question of defendant's title, we shall brief the last two questions asserted under the defendant's title.

THIRD
THE DEFENDANT'S TITLE

Having demonstrated, as we believe, that plaintiffs have no title to La Santisima and to the Guayuco Banco as a portion thereof avulsively cut from Mexico to the United States in 1926 and having shown as we believe, that plaintiffs lack the legal capacity to acquire or hold title to land within the prohibited zone, we turn with equal confidence to the title or right of the defendant. In support thereof we submit the following propositions:

PROPOSITION I. The Mexican Republic had the right which pertains to every sovereign power to take for public use any and every species of property situated within its territorial dominion.

PROPOSITION II. It is exclusively the province of the Mexican Republic to determine what is a public use and what disposition shall be made of the natural resources of the country, including the lands thereof, to best serve the economic and political security of the people. When, in the judg-

ment of the Mexican people, it became necessary to break up vast landholdings (latifundios) and distribute them among a multitude of small holders, the Republic was but following in the footsteps of the older and most enlightened nations, as is evidenced by the history of the European nations. For example, witness the expropriation of the vast landed estates of France and their distribution among a great horde of peasant proprietors, which has given such security and stability to the French nation as to challenge the admiration of the world. For a more modern example, witness the example of Great Britain, before the establishment of the Irish Free State. The economic misery and discontent of the island, which had wracked the empire for perhaps two centuries, was removed by compelling the subdivision of great landed estates and the settlement of small peasant proprietors, who make compensation therefor over a long period of years, through a most moderate land tax.

The necessity which confronted Mexico can find no better illustration than the case of La Santisima, a tract of land two leagues in width, one hundred and forty miles in length, and embracing an area larger than the State of Rhode Island. Since the State of Chihuahua granted the land to Laureano Muñoz in 1859 to time expropriation proceedings were begun there is no word of evidence to show that any human being had made beneficial use of one foot of it; no evidence that any one of the title holders or claimants ever set foot on it; no tenant is shown to have cultivated an acre, or herded upon it cattle, sheep or even goats. As the Court judicially knows and the testimony discloses, across the river from La Santisima towns rise, (Fort Hancock and McNary), and a great valley is broken into farms. As soon as expropriation proceedings begin, settlement begins. Engineer Cardona testi-

fies that perhaps four thousand settlers were upon the land when he last visited it. (R. 208.)

PROPOSITION III. Under the recognized principles of International Law, Foreigners cannot challenge the validity of acts of the sovereign power which bear impartially and with equal weight upon the Citizen and the Foreigner.

AUTHORITIES

Under Three Preceding Propositions

Kohl vs. United States, 91 U. S., 371; 32 Law Ed., 449.

Cincinnati vs. Louisville & N. R. R. Co., 223 U. S., 390; 56 L. Ed., 481.

Moore's Int. Law Digest, Vol. 4, p. 11, Sec. 537, and cases there cited.

PROPOSITION IV. In obedience to principles of International Comity, and the usage of nations, it is right and customary for a nation to assert and defend the interests of its nationals resident in foreign countries, including indemnification for deprivation of property lawfully acquired, but such indemnification is not sought by attacking the validity of national laws constitutionally adopted and non-discriminatory as between citizen and foreigners, but is attained through political and diplomatic agencies.

AUTHORITIES

Moore's Int. Law Digest, Vol. 4, p. 3, Sec. 534.

> For comprehensive statement and analysis of the laws of modern nations and of the several states of the American Union, with reference to the acquisition and tenure of land by foreigners and the usages of States with reference thereto, see—

Wheaton's Int. Law, Fourth Ed., Part II, Chap. 2 Sec. 82a. See authorities cited under Proposition VII, infra.

PROPOSITION V. Since the Constitution of Mexico, like that of the United States, requires that indemnification be made for private property taken for public use, it is superfluous to inquire whether such obligation rests upon the State, in the absence of constitutional requirement to that effect.

It is by no means true, however, that the duty rests upon the sovereign to make payment in advance of taking, or contemporaneous with taking. An examination of modern Constitutions disclosed that while the principle of compensation for private use is now general, it is not the general rule that the payment should be previously or contemporaneously made. The decision of the Federal Courts and of those of a majority of the States is that when the taking is by the State or of its governmental divisions, payment need not be made previous to or contemporaneously with the taking, unless the Constitution so provides.

AUTHORITIES

The principles almost universally accepted are set forth in Corpus Juris, Vol. 20, p. 833, Sec. 269 of Eminent Domain, and the authorities are there cited.

When property is taken by the United States, prepayment is not necessary. In re Manderson, 51 Fed., 501.

For distinction between taking by the Sovereign, in propria persona, and by private agency serving a public use see—

Lewis on Eminent Domain, Sec. 457, Vol. 2; 20 C. J., 833, Sec. 269.

The State of Texas need not prepay nor secure.

Constitution of 1876, Art. 1, Sec. 17.

This provision applies when land is taken for public road.

Travis County vs. Trogden, 31 S. W., 358.

The change of language in Mexican Constitution of 1917 is conclusive, and the Supreme Court of the Republic has five times passed upon the question.

The change in the Constitution of Mexico is significant. The provision of the Constitution of 1857, Title 1, Art. 27, reads as follows:

> "Private property shall not be taken without the consent of the owner, except for a public purpose, and upon *previous* indemnification. The law shall determine the authority which may make the condemnation and the conditions upon which it may be carried out."

The Article of the Constitution of 1917 reads as follows:

> "Art. 27. . . . Private property shall not be expropriated except for reasons of public utility and by means of indemnification."

The Supreme Court of Mexico has five times held that the expropriation of land under the Agrarian Law is constitutional, and that previous indemnification is not required.

PROPOSITION VI. The Constitution of 1917, Art. 27, Sec. VIII, required the several States, at the next ensuing session of the State Congress, to pass laws putting into effect the Agrarian provision of the Constitution. The Federal Congress was authorized to pass laws necessary to empower

the States to create an agrarian debt, but the language of the requirement clearly indicates that the passage of the enabling act and the creating of the agrarian debt were not conditions precedent to the expropriation and subdivision and sale of latifundios.

Even plaintiffs' expert could not question it, except upon the contention that the Agrarian Law itself was unconstitutional, and in that assertion he is over-ridden by the Supreme Court, and is contradicted by two eminent and profound lawyers, whose lives have been devoted to the active practice of the law, instead of the holding of non-legal administrative office. Mr. Mena testified that he had not heard its constitutionality questioned until he heard it at this trial.

PROPOSITION VII. In the instant case there could rest no obligation upon the Government of the State of Chihuahua to compensate the plaintiffs for the value of La Santisima previous to the expropriation, contemporary therewith, or at any time in the future, since the governmental authority to whom was committed the execution of the expropriation proceedings determined that plaintiffs had no title to La Santisima.

Without unduly prolonging this brief by quoting therein the provisions of the Agrarian Law of the State of Chihuahua, or quoting at length the executive proceedings, which are set forth in full in defendant's Abstract of Title, we respectfully call the attention of the Court to the fact that the expropriation proceedings were in no sense an ex parte proceeding, as testified by Mr. Shapleigh in his deposition. On the contrary, it manifestly appears from the record, the manifest truth of which is inescapable, upon a review of the proceedings, that the plaintiffs were represented by Attorney

Delbert J. Haff throughout, and the recitations in the proceedings are confirmed in every essential part by the testimony of Engineer Cardona; by the testimony of A. P. Coles; and by the powers of attorney which were offered in evidence by the plaintiffs.

It is difficult indeed to explain the indifference, not to say contempt, with which the plaintiffs disregarded the repeated admonition of the Mexican authorities, not only as to the subdivision of latifundium, but as to showing title in themselves, or even their capacity to hold the title within the prohibited zone.

Out of an abundance of caution, the attention of this Honorable Court is invited to the fact that while a permit was introduced upon the trial of this cause, showing that subsequent to the conveyance from B. H. Davis to Shapleigh, Ranken and Peck, a permit was issued to the three of them to acquire title within the prohibited zone, it is nowhere contended that any such permit was exhibited to the Mexican authorities by the plaintiffs when called upon to produce it. On the contrary, in view of their utter failure so to do, the Governor of Chihuahua found that although specifically called upon to show such permit to hold title; and although their attorney, Antonio Horcasitas, has stated in a memorial that such a permit existed, they utterly failed to produce it, and, in the absence of proof, the Governor found that it did not exist. Twice the plaintiffs through their counsel, asked for an extension of time, and twice the extension was granted. (R. 259, 260.)

It further appears that from the papers presented to the Governor by counsel for plaintiffs, a grave doubt was raised as to whether title was claimed to be in the plaintiffs or in the

Rio Bravo Land and Cattle Company, and, though called upon to clear up this matter, plaintiffs made no effort to do so.

We respectfully request the Court to read the conclusions by which Governor Almeida summed up the case against plaintiffs, that the Governor was warranted in holding that the plaintiffs, although given every opportunity to do so, had utterly failed to establish title in themselves or in the Rio Bravo Land and Cattle Company; that notwithstanding utter want of proof of title, the Governor did, nevertheless, in the Third Paragraph of his Decree, (R. 265), decree indemnification to the owners, in accordance with Sub-Section D, of Section 7, of Article 27 of the Federal Constitution, thereby clearly leaving the door open to the plaintiffs to still establish their right to indemnification, if and when they showed ownership to the lands expropriated. We cannot escape the conclusion that the plaintiffs voluntarily abandoned any effort to prove their title or seek indemnification at the hands of the Government of Chihuahua, and elected to place their interests in the hands of the Mixed Claims Commission, and to handle the same through the political department of the Government. This course of action was clearly available to them, as appears from the authorities heretofore cited, and which are again referred to, with additional authorities submitted under this proposition.

Plaintiffs have utterly overlooked the fact that they must recover, if at all, upon the strength of their own title and have devoted a large portion of their brief to the attack of defendan't title. For the purpose of simplifying the matter involved, we admit that the second question involved, as propounded by plaintiffs on page 6 of their brief, is not an essential matter in this case. Confessedly the Governor of the State of Chihuahua could not convey title to land which at

the time of the attempted conveyance was in the United States. As we have heretofore set forth, defendant contends only that having filed an application, he had the prior right to acquire the land. The authorities have been hereinbefore mentioned. Consequently, to meet the vicious attack upon the expropriation proceedings, we turn to an examination of them.

We respectfully request that the court bear in mind that all of the proceedings took place under the Mexican Constitution and the Agrarian law. Plaintiffs' expert nowhere assails the regularity of any of the expropriation proceedings, always falling back upon his supposition that the Agrarian Law is unconstitutional. As we have hereinbefore demonstrated, the Supreme Court of the Republic of Mexico has seen fit to differ with the former Secretary of the Interior and Minister Plenipotentiary to Switzerland and Belgium.

Attached hereto as Appendices A and B are respectively:

1. Mexican laws which do not appear in the law introduced by plaintiffs in the transcript.

2. A translation of the opinion of the Supreme Court of the Republic of Mexico with regard to indemnification.

The expropriation proceedings being legal and in accordance with the laws of Mexico, we turn to the discussion of the Agrarian law.

Article 27 of the Constitution set forth in Appendix A provides, among other things:

> "During the Mexican constitutional term, the Congress and the state legislatures shall enact laws within their respective jurisdictions for the purpose of carrying out the division of large landed estates subject to the following conditions;

(e) The owner shall be bound to receive bonds of a special issue to guarantee the payment of the property expropriated. With this end in view the Congress shall issue a law authorizing the states to issue bonds to meet their Agrarian obligations."

Transitory Article 11 reads:

"Until such time as the Congress of the Union and the state legislatures shall legislate on the Agrarian and labor problems, the bases established by this constitution for said laws shall be put in force throughout the republic."

Obviously, there is a plain mandate in the Constitution of 1917, requiring the state legislatures to pass Agrarian laws. In accordance with the mandate, the State of Chihuahua passed such a law. In accordance with the provisions of that law, the land was expropriated. Plaintiffs assail the proceedings, as we judge it, in two ways:

First: that the indemnification must be simultaneous with the taking.

Second: That indemnification by means of bonds instead of money is not lawful.

Indemnification means among other things, as defined by Webster, to "reimburse". How may a person be reimbursed unless he has suffered some prior loss? The cases hereinbefore cited show that the United States and the State of Texas need not indemnify a person at the actual time of taking. In addition, however, since this case is tried under the laws of Mexico applicable, we respectfully direct the attention of the court to Appendix B of this brief, wherein the Supreme Court of Mexico has held not once, but at least five times, that indemnification is a posterior act. We believe that settles the law. Plaintiffs rely upon the case of Pastor Mon-

cada, widow of Blanco Teodora, decided in 1920, wherein the court holds as *obiter dicta* that *perhaps* the payment of indemnity should not be postponed. That case was decided in 1920. However, in 1926, the year in which this land was cut from the right bank of the Rio Grande to the left bank and came into the jurisdiction of the United States, the Supreme Court of the Republic of Mexico passed upon the question of whether indemnity should be simultaneous at least five times and thus settled the law of Mexico, because, as shown by the testimony, a single decision of the Supreme Court of the Republic of Mexico does not make law. The question must be passed upon five times before it can appear in the official reports, known as the Judicial Seminario. (R. 374). Consequently, we believe that the question of the payment of the indemnity was absolutely settled by the laws of Mexico. Should then the payment be in cash? Obviously the Constitution provides for payment in bonds and we do not believe that this court will look into the reason behind the Constitution, since the mandate is so plain, as hereinbefore shown.

FOURTH

Pretermitting the question of the validity of the expropriation proceedings, we find nevertheless that the plaintiffs have been deprived of their property by a foreign government and they now seek through the courts of this country to recover the same on the theory that the land has now passed to the jurisdiction of the United States. We believe that this question is foreclosed against plaintiffs. We have heretofore referred to the cases upon which we rely in this connection, but desire at this point to emphasize them more fully.

Mexico in 1926 was, as this court judicially knows, a foreign government recognized by the United States of America. Probably the two leading cases on the subject are *Oetgen vs. Central Leather Company*, 246 U. S. 297, and *Ricaud vs. American Metal Co.*, 246 U. S. 305, the latter case arising originally from the identical trial court from which this case comes, wherein the court held that:

> "The fact that property seized and sold by the authority of a foreign government belonged to an American citizen not residing in the foreign country at the time, does not empower a court of this country to re-examine and modify their action."

And in the Oetjen case, again quoting from the syllabus we find a holding to the effect that:

> "Every sovereign state is bound to respect the independence of every other sovereign state and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory."

At the time the Governor of the State of Chihuahua expropriated the land, the land was in Mexico and regardless of the right or the wrong of same, we believe it is settled that the courts of this country will not inquire into the same.

Again in *American Banana Co. vs. United Fruit Co.*, 213 U. S. at page 356, the court says:

> "For another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own intitutions rather than those of the place where he did the acts, not only would be unjust, but would be an interference of the authority of another sovereign, contrary to the comity of nations, which the other states concerned justly might resent."

In *Underhill vs. Hernandez*, 168 U. S. at page 254, the court says:

> "The acts of the defendant herein were the acts of the government of Venezuela and as such are not properly the subject of adjudication of the court in another government."

Judge Learned Hand in *Earn Line S. S. Co. vs. Sutherland S. S. Co.*, 254 Fed. at page 129, states the proposition thus:

> "The act of another sovereign within its own territory is of necessity legal."

Oliver American Trading Co. vs. Government of the United States of Mexico, 5 Fed. (2) 659, C. C. A. 2, enunciates the same principle of law.

We believe the foregoing authorities aptly demonstrates that this court will not inquire into the validity of the proceedings in Mexico when the land involved was in Mexico.

Briefly answering seriatim the propositions outlined by plaintiffs, we ask the questions:

1. Is the taking of the land contrary to the principles of the International laws and established customs? The answer seems to be in the negative inasmuch as the constitutional and statutory method of the taking of said land was followed as we believe we have hereinabove demonstrated. Compensation was to have been in bonds.

2. Is the expropriation in violation of the treaty between the United States and Mexico? In this connection, we respectfully request the court's consideration of Article 9, 2nd Paragraph, of the Convention creating the General Claims Commission, quoted on Page 14 of Plaintiffs' brief. The

very language of the Convention shows that there is in contemplation of the parties the taking of private land, and that in the event the same should be taken, the Commission shall determine whether the land should be returned or whether money should be paid therefor. It is in direct harmony with the language of the trial court and the Circuit Court of Appeals in holding that a claim for restoration should be made through the political department of the government rather than through the courts. Plaintiffs contend they are seeking the land and not damages and, therefore, have no recourse other than the court. The language of the Convention seems to be contrary to plaintiffs' contention.

3. Was the failure to pay plaintiffs for the land taken in violation of the provisions of Mexican Constitution? In this connection we respectfully refer the Court to Appendix B, attached to this brief, wherein the Supreme Court it seems to have foreclosed the question against plaintiffs' contention.

4. Does not a statute of the State of Chihuahua forbid expropriation without compensation? Art. 736 of the Civil Code of the State of Chihuahua (R. 91), it is to be borne in mind, was passed at the time the present Civil Code of Chihuahua went into effect, to-wit, 1898. The Agrarian Law, under which the expropriations took place, was passed in 1922. To us it seems the plaintiffs have overlooked the General Law of statutory construction, that if two laws be in conflict, that passed later in time shall control.

5. Were the expropriation proceedings and Agrarian Law, purporting to authorize it, null and void? Plaintiffs allege the Governor was without authority to conduct the expropriations inasmuch as the Governor was not a Court. This question has also been passed upon by the Supreme Court of

Mexico at least five times. The contention has been met earlier in this brief. We do, however, reiterate the following as held by the Supreme Court of Mexico:

> "The decisions of the executive power in agrarain matters are wholly final. If they participate of the character of judicial decisions which because they create or extinguish rights produce the effect of res adjudicata and may not be modified or revoked not even by the President of the Republic because they would violate vested rights of patrimonial character, and property would have no stability." (R. 327).

6. Did the Mexican Government have jurisdiction over the land in 1930? We admit that it did not. Mexico lost jurisdiction over the land in 1926 when the avulsive change took place, and if plaintiffs are under the impression that we so contend, they are in error.

7. May the Courts of this country inquire into the validity of the Mexican expropriations? We respectfully submit that this has been answered earlier in the brief.

We believe the other propositions submitted by plaintiffs in their brief have been met earlier in this one.

CONCLUSION

It is respectfully submitted that the judgment of the trial court and of the Circuit Court of Appeals should be affirmed, for the reason that the plaintiffs never acquired title through proper recorded muniments, or by prescription; that whatever right they may have acquired, if any, was taken from them in accordance with the laws of Mexico, while the lands were situated within the Republic of Mexico, and subject to its sovereign jurisdiction; and that the courts of the United States will not inquire into the validity of the acts of a foreign

sovereign, done within its own boundaries, upon lands situated therein.

We respectfully request that the judgment of the Circuit Court of Appeals be affirmed.

Respectfully submitted,

RICHARD F. BURGES,
WALTER S. HOWE,
Attorneys for Respondent

By.....

Copy of the foregoing Brief received on this..... day of November, A. D. 1936. Further copy and notice thereof and notice of filing in the Supreme Court of the United States, and earlier filing is hereby expressly waived.

McKENZIE AND GAMBLE,
Attorneys for Petitioners

By.....